

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum through Incentive	)	
Auctions	)	
	)	

To: The Commission

**COMMENTS**

Licensee, by its attorneys, hereby submits these Comments in Response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>1</sup> Due to the sensitive competitive nature of issues raised by the incentive auction, Licensee, the owner and operator of a full-power, independent television station located in a top-tier market, submits these comments anonymously in accordance with the Commission's Rules.<sup>2</sup> In the NPRM, the Commission requests comment on various aspects of its proposed broadcast television spectrum incentive auction. Notwithstanding the breadth of ground covered by the NPRM, Licensee limits its Comments to two main subjects: (i) the Commission's treatment of Distributed Transmission System ("DTS") facilities licensed after February 22, 2012, the date of enactment of the Middle

---

<sup>1</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Notice of Proposed Rulemaking, FCC 12-118, Docket No. 12-268 (rel. Oct. 2, 2012) ("NPRM").

<sup>2</sup> See 47 C.F.R. § 1.419 (anonymous electronic filings require attorney of record contact information); 47 C.F.R. § 1.415 (no analogous requirement for anonymous paper filings). See also *Media Bureau Releases Additional Guidance to Broadcasters Wishing to File Anonymous Comments in the Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions Proceeding*, Public Notice, GN Docket No. 12-268, DA-12-2040 (rel. Dec. 18, 2012).

Class Tax Relief and Job Creation Act of 2012,<sup>3</sup> for purposes of determining Station bid prices in the reverse auction, and (ii) the Commission's proposed spectrum-sharing policies. First, in order to honor ongoing broadcaster investments made in reliance upon existing Commission DTS policies, Licensee urges the Commission to base bid prices upon the broadcast facilities and service contours in place at the time of the incentive auction rather than at the time of the *Spectrum Act's* passage. Second, with respect to spectrum sharing arrangements, Licensee urges the Commission to take steps to protect the identities of broadcasters interested in pursuing channel sharing partnerships, including establishing a confidential system to help match stations interested in spectrum sharing. Such policies would advance rather than hinder the goal of the incentive auction, namely to recover and repurpose as much spectrum as possible. In support thereof, Licensee states as follows.

Licensee submits that the Commission should base its bid prices for full power stations on the station facilities in place at time of the auction rather than upon those facilities licensed as of February 22, 2012. There is no legal impediment to the Commission's recognition of DTS facilities licensed as of the auction date, and its incorporation of service contours based on such facilities into its bidding price calculation. According to the Commission: "Although § 6403(b)(2) mandates preservation only of certain licensed facilities, we do not interpret it to prohibit the Commission from granting protection to additional facilities where appropriate."<sup>4</sup> As the Commission recognizes here, the Spectrum Act sets a floor – coverage areas and populations served as of February 22, 2012 – without imposing a ceiling. Thus, for purposes of establishing fair and accurate reserve prices for stations, the Commission has authority to take into account post-Spectrum Act changes in coverage areas and populations.

---

<sup>3</sup> Pub. L. No. 112-96, § \_\_\_\_, 125 Stat. \_\_\_\_ (2012) ("Spectrum Act").

<sup>4</sup> NPRM at ¶ 113.

The equitable considerations underscoring the Commission's proposed treatment of Class A stations – namely, that many Class A licensees are in the midst of modifying their facilities pursuant to the Commission's digital television policies<sup>5</sup> – apply equally to licensees with outstanding DTS applications. Like Class A licensees, these full power licensees have invested substantial time and resources toward their DTS facilities, efforts undertaken with an eye to Commission policy and the public interest rather than the Spectrum Act. Licensee, for example, has devoted considerable time and resources in pursuit of its DTS facilities in order to bring its programming to additional viewers. The Commission heralded DTS technology as a game-changing technology and encouraged broadcasters to embrace it.<sup>6</sup> Licensee heeded the Commission, adopting DTS plans and filing a DTS application well in advance of passage of the Spectrum Act. Licensee's efforts and investments should not be lightly discarded based upon an arbitrary cut-off date. By the time the incentive auction is held, Licensee intends to have fully operational DTS facilities in place. It is indisputable that these facilities will enhance the value of Licensee's Station. A bid amount based upon licensed facilities as of February 2012 would therefore discount the true value of the Station and disregard Licensee's reliance upon the Commission's DTS policies in choosing to invest in DTS facilities.

With respect to channel sharing arrangements, Licensee notes that confidentiality and communications issues may prove difficult for interested stations to navigate. Broadcasters interested in such arrangements may be wary of approaching potential channel-mates as likely

---

<sup>5</sup> See NPRM at ¶ 115 (explaining proposal to protect Class A facilities not licensed as of February 22, 2012 as function of Class A licensees making digital transition plans “in reliance on” Commission rules).

<sup>6</sup> *In the Matter of Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd 16731 (2008) (“DTS R&O”).

channel partners may also be competitors. Unwelcome advances could easily be exploited by competitors to the detriment of the station seeking a channel sharing arrangement.

Congress included robust confidentiality provisions in the Spectrum Act. Section 6403(a)(3) of the Spectrum Act instructs the FCC to “take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction,” including “withholding the identity of such licensee” until any reassignments and reallocations become effective.<sup>7</sup> The Commission has indicated its intention to faithfully implement the Spectrum Act’s confidentiality provisions. In the NPRM, the Commission proposes a number of measures that Licensee believes will go a long way to reassuring broadcasters concerned about confidentiality and communications issues. Below are a number of the Commission’s proposals that Licensee supports:

- providing individual notification to qualified auction applicants rather than public notice;<sup>8</sup>
- erring on the side of caution and protecting non-identifying information about licensees as well as clearly identifying information;<sup>9</sup>
- protecting confidential licensee data beyond the effective completion of the reverse and forward auctions and the reassignments and reallocations occasioned thereby;<sup>10</sup>
- prohibiting, to the extent permitted by law, applicants and parties to the auction from disclosing any confidential identifying information that could reveal the confidential information and identities of other applicants participating in the auction;<sup>11</sup>

---

<sup>7</sup> Spectrum Act 6403(a)(3). See also NPRM at 28.

<sup>8</sup> See NPRM at ¶ 255.

<sup>9</sup> See NPRM at ¶ 258.

<sup>10</sup> See NPRM at ¶¶ 260-261.

<sup>11</sup> See NPRM at ¶ 262.

- prohibiting communications among applicants located in the same DMA, subject to the general exemption discussed below;<sup>12</sup> and
- providing a general exemption to the rule prohibiting certain communications that would permit communications between parties that have entered into an agreement, arrangement or understanding relating to spectrum usage rights and disclosed such relationships to the Commission.<sup>13</sup>

Licensee believes these measures will help broadcasters feel confident that their data is safe with the Commission. However, these provisions do not solve the problem identified above, namely the reluctance of broadcasters to approach potential channel-sharing partners for fear of competitive reprisals. Accordingly, Licensee urges the Commission to take the further step of developing a confidential program or system for matching stations interested in channel sharing arrangements. Stations could indicate their interest in channel sharing to the Commission, and the Commission could identify suitable potential channel-mates and put them in contact with one another. Once introduced by the Commission, the parties could manage the process of negotiating a suitable channel sharing agreement, and all such negotiations would remain subject to the Commission's confidentiality requirements. While this approach might generate more work for the Commission in the short run, it could convince many reluctant broadcasters to give channel sharing a chance and thereby improve the auction outcome. Absent such a program, many potential auction participants, such as Licensee, may not have a competitively secure entry point to the auction.

---

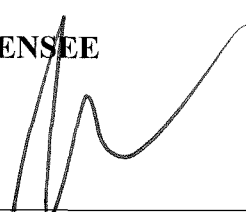
<sup>12</sup> See NPRM at ¶ 264.

<sup>13</sup> See NPRM at ¶ 267. This exemption should be broad enough to ensure that stations considering a channel sharing arrangement are able to communicate with one another.

WHEREFORE, for the foregoing reasons, Licensee requests that the Commission determine the bid price of Stations with pending DTS applications based on the facilities in place as of the date of the incentive auction, and adopt the spectrum-sharing policies outlined above.

Respectfully submitted,

**LICENSEE**



---

Barry A. Friedman  
Thompson Hine LLP  
1919 M Street, NW  
Washington, DC 20036

January 25, 2013